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7 Attorney for Select Portfolio Servicing, Inc.

The Honorable Lonny R. Suko
Hearing Date: February 23, 2011
Response Date: January 31, 2011

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 ANGELA UKPOMA,

11 Plaintiff,

12 vs.

13 SELECT PORTFOLIO
14 SERVICING, INC.,

15 Defendant.

NO. 2:10-cv-00420-LRS

**DEFENDANT'S MOTION TO
DISMISS**

Hearing Date and Time:

February 23, 2011, at 6:30 p.m.

WITHOUT ORAL ARGUMENT

18
19 The defendant, Select Portfolio Servicing, Inc. ("SPS"), through its
20 attorneys of record, moves this Court for an Order dismissing this action,
21 filed on December 1, 2010, by plaintiff Angela Ukpoma. The motion is
22 made on the basis that Ukpoma is not the real party in interest, as her claims
23 belong to her bankruptcy estate in the Chapter 7 case Ukpoma filed a week
24 after this action was commenced. *See In re Ukpoma*, Eastern District of
25 Washington Bankruptcy Court Case No. 10-06815-PCW7. As such,
26 Ukpoma's claims became property of her bankruptcy estate. In the

1 alternative, Ukpoma's claims should be dismissed for failure to state a claim
2 against SPS under Fed. R. Civ. P. 12(b)(6).

3 This Motion is supported by the Declaration of Diane Weinberger, and
4 the Memorandum in Support of Defendant's Motion to Dismiss, filed
5 herewith.

6 A proposed order is attached hereto as Exhibit 1.

7 DATED this 27th day of December, 2010.

8 /s/ Mark A. Bailey

9 Mark A. Bailey, WSBA No. 26337

10 BERESFORD ♦ BOOTH PLLC

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15 markb@beresfordlaw.com

16 *Counsel for Defendant Select*
17 *Portfolio Servicing, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System and mailed the foregoing to the following via U.S. Mail to:

Angela Ukpoma
P.O. Box 1075
Kettle Falls, WA 99141
Pro Se

Angela Ukpoma
1123 Highway 395 North
Kettle Falls, WA 99141
Pro Se

Bruce R. Boyden, Chapter 7 Trustee
Law Offices of Bruce R. Boyden
621 West Mallon
Suite 607
Spokane, WA 99201

DATED this 27th day of December, 2010.

/s/ Mark A. Bailey

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*Counsel for Defendants Select
Portfolio Servicing, Inc.*

EXHIBIT 1

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The Honorable Lonny R. Suko
Hearing Date: February 23, 2011

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

ANGELA UKPOMA,

Plaintiff,

vs.

SELECT PORTFOLIO
SERVICING, INC.,

Defendant.

NO. 2:10-cv-00420-LRS

[PROPOSED]

ORDER OF DISMISSAL

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15 This matter came before the Court on the Motion to Dismiss, filed on
16 December 27, 2010, by defendant Select Portfolio Servicing, Inc. (“SPS”).
17 Based on the pleadings and papers on file, the supporting memorandum, and
18 the evidence presented, the Court finds that on December 8, 2010, a week
19 after the instant suit was commenced, the plaintiff Angela Ukpoma filed for
20 relief under Chapter 7 of the United States Bankruptcy Code, in the matter of
21 *In re Ukpoma*, United States Bankruptcy Court for the Eastern District of
22 Washington Case No. 10-06815-PCW7. Ukpoma’s Chapter 7 Trustee, and
23 not Ukpoma herself, is the real party in interest to pursue the claims asserted
24 in this action, and the Chapter 7 Trustee has not sought to intervene as
25 plaintiff despite notice of SPS’s motion. Moreover, the Court concludes that
26 Ukpoma’s Original Petition, filed herein on December 1, 2010, fails to state

1 a claim against SPS upon which relief may be granted, as required by Fed. R.
2 Civ. P. 12(b)(6).

3 Accordingly, **IT IS HEREBY ORDERED:**

4 1. SPS's Motion to Dismiss is hereby **GRANTED**.

5 2. Plaintiff's claims against SPS are hereby **DISMISSED**.

6 The District Court Executive is directed to enter this order and forward
7 copies to counsel.

8 DATED this _____ day of February, 2011.

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11 _____
CHIEF JUDGE LONNY R. SUKO

12 Presented by:

13 BERESFORD BOOTH PLLC
14

15 _____
16 By: Mark A. Bailey, WSBA No.26337
17 Attorney for Defendant
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